

MOHAMED ZUHAIL ABU BAKAR & ANOR.

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v.

ABDUL RASHID HASSAN & ORS.

HIGH COURT MALAYA, ALOR SETAR
MOHD. SAARI YUSOFF JC
[ORIGINATING SUMMONS NO. 24-490-91]
17 FEBRUARY 1992

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COMPANY LAW: *Plaintiffs not registered members of the company - Issue of locus standi - Plaintiffs seek injunction to protect their interest in the company - Whether injunction upon being granted is tantamount to interfering with the internal management of the company - Balance of convenience.*

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This is an application for declaration, perpetual injunction and other reliefs. For purpose of record Muda Kuari Sdn. Bhd. (the company) is joined as intervenor. *Inter alia*, it was submitted that in the event of the company being wronged by the directors, only the company could sue.

The matter before the Court was whether the plaintiffs in the first place had the *locus standi* to pursue this cause of an action.

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Held:

[1] A company being a corporation, is a person in the eyes of the law quite distinct from the individuals who are its members. As a distinct legal personality, a company can own property. It does not hold its property merely as an agent or trustee for its members and they cannot sue to enforce its rights otherwise than in exceptional circumstances. A member of a company has no legal or beneficial interest in the property of the company.

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[2] In applying the law to the facts of the case, clearly in my view, both the plaintiffs have no *locus standi* to bring this action against the defendants and intervenor company. Even if the company's assets are depleted it does not amount to injury to the members.

[3] Moreover, as in this case, the plaintiffs' action for injunction would tantamount to interfering with the internal management of the company, where in law the Court has no jurisdiction.

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[4] On balance of convenience, the injunction to restrain the defendants from operating the company's bank account for purpose of running the company would undoubtedly have detrimental effect on the company and will paralyse it. The Court found that the balance of convenience would favour the defendants and intervenor company.

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[Plaintiff's action dismissed with costs and the interlocutory injunction set aside.]

Cases referred to:

Ingall v. Moran [1944] 1 All ER 97 (cons)

Foss v. Harbottle [1843] 2 Hare 461 (foll)

Macaura v. Northern Assurance Co. [1925] AC 619 (foll)

Burland & Ors. v. Earle & Ors. [1902] AC 83 (foll)

Prudential Assurance Co. Ltd v. Newman Industries Ltd. (No. 2) [1982] 1 All ER 354 (foll)

For the plaintiffs - Kartar Singh (Mayandi with him)

For the defendants and intervenor - Ghazi Ishak (Ong Kheng Leong with him)

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JUDGMENT

Mohd. Saari Yusoff JC:

This is an application for declaration and perpetual injunction and other reliefs as set out in the summons (encl. 1).

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For purpose of record, by consent, Muda Kuari Sdn. Bhd. (hereinafter referred to as “the company”) is joined as intervenor.

On application for postponement by the plaintiffs, it is disallowed on the ground that this case was postponed more than once before. Since filing the summons on 2 May 1991, the Counsels have ample time to prepare the case. I do not regard the Counsel’s failure to receive written submission from the defendants as a valid ground for granting postponement.

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Encik Ghazi who appeared on behalf of the defendants contended that the plaintiffs have no *locus standi* in the present application on the following grounds.

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Firstly, among other things, he pointed out that the summons was filed on 2 May 1991, whereas L.A. (encl. 20) was granted to 1st plaintiff on 8 May 1991. He submitted that, since L.A. was granted subsequent to the filing of the summons, 1st plaintiff had no *locus standi* to file the summons on behalf of the estate of Haji Abu Bakar bin Hussein (deceased). In para. 11 of the affidavit (encl. 2), 1st plaintiff stated that the claim herein was made on behalf of the said deceased. I agree with Encik Ghazi that, in law, subsequent grant of L.A. as in this case did not have the effect of validating the summons (*Ingall v. Moran* [1944] 1 All ER 97).

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Secondly, Encik Ghazi submitted that both plaintiffs were not registered as members of the company. This fact was conceded by the plaintiffs. It is common ground that the importance of being registered as member is that such shareholder would be able to participate more actively or vote at meeting as provided under Article 31 of the memorandum and articles of association of the company.

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Thirdly, he submitted that in the event of the company being wronged by the directors, only the company could sue.

For the plaintiffs, Encik Kartar Singh submitted that by operation of law, those shares referred to in the affidavit (encl. 2) vested in both plaintiffs at the moment of death of their deceased parents. It is common ground that Haji Abu Bakar bin Hussein (deceased) owned 144,000 shares in the company while Haji Majid bin Lateh (deceased) owned 128,001 shares.

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For purpose of determining the issue of *locus standi*, suffice for me to deal with the third ground raised by the defendants.

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A company, being a corporation, is a person in the eyes of the law quite distinct from the individuals who are its members. As a distinct legal personality, a company can own property. It does not hold its property merely as an agent or trustee for its members and they cannot sue to enforce its rights otherwise than in exceptional circumstances (*Foss v. Harbottle* [1843] 2 Hare 461). A member of a company has no legal or beneficial interest in the property of the company (*Macaura v. Northern Assurance Co.* [1925] AC 619 at 626).

In House of Lord’s case of *Burland & Ors. v. Earle & Ors.* [1902] AC 83 at 93, in his judgment, Lord Davey states *inter alia*:

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It is clear law that in order to redress a wrong done to the company or to recover moneys or damages alleged to be due to the company, the action should *prima facie* be brought by the company itself. These cardinal principles are laid down in the well-known cases of *Foss v. Harbottle* and *Mozley v. Alston* [1847] 1 Ph. 790, and in numerous later cases which it is unnecessary to cite.

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It seems to me that the substance of the complaint as stated in para. 13 and 14 of the affidavit (encl. 19), was that the plaintiffs were not happy with the running of the company by the defendants. Therefore, the plaintiffs are seeking for injunction simply to protect their interest in the company, which injunction, if granted, would act as a 'safety valve'.

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Further, I note that there is nothing in the affidavit of the plaintiffs, which purport to deny the plaintiffs (in their capacity as administrators) of any title in respect of their shares pursuant to Article 30. On the contrary, both plaintiffs were appointed as directors and the 2nd plaintiff is still a director of the company. In the case of 1st plaintiff, his service as a director was terminated on or after 2nd March 1991.

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In applying the law cited above to the facts of the case, clearly, in my considered view, both the plaintiffs have no *locus standi* to bring this action against the defendants and intervenor company. Even if the company's asset are depleted (which fact was not supported by affidavit) it does not amount to injury to the members (*Prudential Assurance Co. Ltd. v. Newman Industries Ltd.* (No. 2) [1982] 1 All ER 354 at 366).

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Moreover, as in this case, the plaintiffs' action for injunction as in prayer (h) and (i) of summons (encl. 1) would tantamount to interfering with the internal management of the company, where in law the Court has no jurisdiction (*Burland & Ors. v. Earle & Ors.*)

On balance of convenience, the injunction to restrain the defendants from operating the company's bank account for purpose of running the company would undoubtedly have detrimental effect on the company and paralyse it. In the result, I hold that the balance of convenience would favour the defendants and intervenor company.

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On adequacy of damages, as the matter has not been fully argued coupled with the fact that it was not supported by any affidavit, I therefore refrain from expressing any view.

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For reasons stated above, I dismissed the plaintiffs' action with cost and set aside the interlocutory injunction.

Also found at [1992] 2 CLJ 861

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